



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 8, 2020

CASE NUMBER: 2019OPA-0383

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Not Sustained (Management Action)
# 2	5.170 - Alcohol and Substance Use 5.170-PRO-1 Testing for Impairment	Allegation Removed

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

It was alleged that the Named Employee failed to timely report serious misconduct to a Department supervisor.

SUMMARY OF INVESTIGATION:

On Friday, May 24, 2019, West Precinct Bicycle Officers, including Named Employee #1 (NE#1) and the Subject, were assigned to work two demonstrations that occurred within the confines of the East Precinct. NE#1 and the Subject were partners.

NE#1 provided the following account to OPA. At approximately 9:00 a.m., NE#1, the Subject, and other Officers went to get coffee at the beginning of their shift. At that time, NE#1 smelled the odor of intoxicants. He observed that the Subject's eyes were bloodshot, that he had not shaved, and that he was speaking with an irregular affect. NE#1 also noted that the Subject had been late to work that morning and the Subject was rarely late. When they were out in the field, NE#1 spoke with the Subject and detected the odor of intoxicants on his breath. NE#1 recalled that the Subject was speaking loudly and jovially, which NE#1 described as being out of character for the Subject. NE#1 also recalled that the Subject showed him and commented on various videos. NE#1 said that the Subject's eyes remained bloodshot.

The Officers' responsibilities at the demonstration concluded and they prepared to work the next event. NE#1 recounted that, at that time, he spoke with the Subject concerning the smell of alcohol on the Subject's breath. NE#1 told him that he should use a sick day and go home. NE#1 offered to drive him home. NE#1 stated that the Subject laughed and then left his presence. He saw the Subject a little later. NE#1 described that the Subject was chewing a large quantity of gum. NE#1 again asked whether the Subject was going to go home. For a second time, NE#1 offered to drive the Subject home. The Subject again refused and walked away.

NE#1 and the Subject began working the second demonstration. NE#1 said that he and the Subject were in the lead of the other Bicycle Officers. NE#1 indicated that he remained in the vicinity of the Subject. NE#1 recalled that the protest was uneventful, and they did not have to take any enforcement action. NE#1 noted that, during this incident, the Subject did not interact with community members and, in NE#1's opinion, did not pose a substantial safety risk.

NE#1 explained that he had received substantial training concerning the detection of intoxication, as well as concerning the physiological effects of alcohol on the body. NE#1 stated that he had earned advanced certifications in this area and estimated that he had processed several hundred DUIs. NE#1 told OPA that, based on his observations of the Subject and his training and experience in this area, he believed that the Subject reported for duty on May 24 with alcohol on his breath and that the Subject may have been under the influence of intoxicants at that time. NE#1 did not immediately report his concerns regarding the Subject. He recounted that, on May 24, his Sergeant was not working and that they were being supervised by an Acting Sergeant. NE#1 and the Subject were scheduled for days off on the following two days. Upon their return to work on May 27, 2019, NE#1 again spoke with the Subject regarding his conduct on May 24. NE#1 relayed that the Subject was not receptive to this discussion and that he denied that there were any issues. Based on the result of their conversation, NE#1 made the decision to report the Subject's conduct to a supervisor and briefed two Bicycle Unit Sergeants. The following day, one of the Sergeants told the Bicycle Unit Lieutenant. The Lieutenant spoke with NE#1 (a Guild Representative was also present), and NE#1 informed him of his observations and concerns surrounding the Subject. The Lieutenant referred the allegation concerning the Subject's potential impairment to OPA. The Lieutenant also made an OPA referral concerning NE#1's failure to immediately report this to a supervisor, which resulted in no fit for duty being conducted. NE#1's conduct is discussed herein while the allegations against the Subject were investigated under 2019OPA-0382.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations

SPD Policy 5.002-POL-6 concerns the reporting of misconduct by Department employees. It specifies that minor misconduct must be reported by the employee to a supervisor, while potential serious misconduct must be reported to a supervisor or directly to OPA (SPD Policy 5.002-POL-6.) The policy further states the following: "Employees who witness or learn of a violation of public trust or an allegation of a violation of public trust will take action to prevent aggravation of the incident or loss of evidence that could prove or disprove the allegation." (*Id.*) Lastly, the policy instructs that: "Any employee who observes another employee engaged in dangerous or criminal conduct or abuse will take reasonable action to intervene." (*Id.*) The policy does not set forth a timeline for reporting; however, the expectation of the Department is that officers do so immediately. This is particularly the case where, as here, evidence of the misconduct is perishable.

It was alleged that NE#1 acted contrary to this policy when he failed to immediately report his belief that the Subject was intoxicated. As a result, no supervisor was able to conduct a timely fit for duty to determine whether the Subject was, in fact, impaired while on duty.

At his OPA interview, NE#1 candidly explained that, when initially confronted with this issue, his first reaction was: "Holy shit! What do I do?" NE#1 said that he had never run into this situation before and he was trying to find a way to most effectively address not only the Subject's impairment, but also the Subject's denials and refusal to accept responsibility. NE#1 also indicated that he was trying to balance this with his concern and care for the Subject, as a person, and with what would be best to help him. NE#1 told OPA that while he did not report the Subject's potential impairment to a supervisor on May 24, he did speak with both Peer Support and Code 4 Northwest. He stated that he did so the evening of May 24, as well as throughout the weekend. NE#1 ultimately made the decision to report to a supervisor based on discussions with Peer Support, as well as due to his belief that the Department would properly and compassionately handle this matter.

NE#1 expressed his disappointment that his failure to report was referred to OPA and was subject to an investigation. NE#1 told OPA that he was aware of the requirement that he report serious misconduct to a supervisor and/or OPA and asserted that he did, in fact, report, even if belatedly. He further acknowledged that an Officer who was intoxicated on duty could constitute a danger. However, he criticized SPD Policy 5.002-POL-6 as being unduly broad and unclear.

NE#1 further articulated his belief that the requirement that he report the Subject's impairment constituted mixed messaging from the Department. He pointed to recent Department-wide emails that had encouraged officers to look out for each other, identified the stresses of policing, and detailed the resources available to those who needed them. He noted that the goals set forth in these emails seemed opposite to the result that would flow from reporting – namely, an OPA investigation, a recommended finding of misconduct, and, likely, significant discipline, if not termination, of employment. He noted that the policy, as currently written, afforded officers no discretion concerning when counseling and treatment might be merited versus reporting. NE#1 asserted to OPA that: "the policy offers no grace or humanity in addressing a sensitive topic with someone to whom you entrust your life with and safety with on a daily basis." NE#1 summed up his frustrations as follows:

My issue here is not with my conduct. My issue here is with the actions of this Department that allow trauma and stress to go unchecked, except for waking you up at 7 in the morning to go to resilience training and telling you to sleep and telling you not to drink and then pulling you into OPA for stuff like this and allowing their people to basically fall victim to the job and then punishing them for completely normal human interactions and reactions to stress.

In OPA's opinion, the question of whether NE#1 violated SPD Policy 5.002-POL-6 is not a difficult one to answer. He was required to report the Subject's potential impairment to either a supervisor and/or OPA. As such, NE#1 engaged in misconduct when he did not do so. Moreover, by failing to immediately report the Subject's condition, NE#1 prevented a fit for duty from being conducted and functionally eliminated virtually the only evidence that could have conclusively established whether or not the Subject was impaired. OPA disagrees with NE#1 that this policy is unclear or overly broad. It is not. However, the less clear question for OPA is whether, under the circumstances of this and other similar cases, this policy and the outcomes that would flow from reporting are actually the right result in the long term.

It is well documented that rates of suicide among police officers are up substantially in the last year. In prior investigations, OPA has recognized the incredibly difficult job that officers are required to perform each day. This includes being on the frontlines of homelessness, drug addiction, and mental illness, while often understaffed and, at times, without the support of members of the communities that they serve. These stressors and the traumatic incidents that officers regularly observe take a toll. Moreover, in some cases, they either create or are exacerbated by alcohol and/or drug abuse. Indeed, this presents enough of a concern that the Department has begun the process of creating a Wellness Unit that would work to improve and maintain officer mental health, among other areas of focus.

As a general rule, OPA believes that alcoholism, mental illness, and other addictions are better addressed by treatment and support rather than by discipline. However, there are, of course, situations where the use of substances, both legal or illegal, will be so incompatible with the oath of office that discipline is a necessity. OPA further believes that punishing the failure to immediately report, rather than creating incentives to do so, will result in less, not more, cases in which the Department is aware of what its officers are going through and is placed in a position to give officers the help they may need. This is ultimately the question that OPA is struggling with here. Should NE#1, who OPA believes was truly confused with what to do and tried to make a good decision, be subject to discipline or, instead, should the framework in which these issues are evaluated be changed? At the end of the day, this case is bigger than NE#1 or the Subject. It is an opportunity for the Department to determine how it wants to address the problem of substance abuse and mental illness of its employees, which OPA worries will only worsen over time.

Given this, OPA chooses not to recommend that NE#1 receive a Sustained finding and, rather, recommends that the Department evaluate new ways to address cases such as this one that are not disciplinary and utilize a compassionate and supportive treatment-focused harm reduction model to do so. The Department should consider effectuating this through the Wellness Unit.

OPA does not reach this conclusion lightly and recognizes the substantial danger that an intoxicated officer could pose to the community. Moreover, as stated above, OPA finds that the failure to report by NE#1 and the Subject's alleged intoxication on duty were clear policy violations. However, when looking at this issue globally, OPA feels that a fundamental change in the Department's handling would ensure healthier officers and this would, in turn, greatly increase and benefit the safety and wellbeing of the community. Such a change would also further procedural justice and fairness for officers, which is a core value of OPA and is or should be an aspirational goal of both SPD and the City of Seattle. As such, OPA recommends that this allegation be Not Sustained – Management Action Recommendation.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #1 - Allegation #2

5.170 - Alcohol and Substance Use 5.170-PRO-1 Testing for Impairment

SPD Policy 5.170-PRO-1 provides guidance on how to test officers who may be intoxicated for signs of impairment. By its express terms, this policy refers to the duties of Department supervisors. NE#1 was not a supervisor on the date in question (or before or since that time) and, as such, this policy is inapplicable to him. While his failure to immediately report prevented this policy from being followed by a supervisor, that conduct is already addressed in the context of Allegation #1. For these reasons, OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**